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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 ORLANDO M. GUTIERREZ,) Case No. CV 18-3903-PA (JPR)
12 Plaintiff,)
13 v.) ORDER DISMISSING ACTION WITH
14 DIGITAL PLAYGROUND INC. et) PREJUDICE UNDER FEDERAL RULES OF
15 al.,) CIVIL PROCEDURE 8(a) AND 12(b)(6)
16 Defendants.)

17 On April 20, 2018, Plaintiff filed pro se a civil-rights
18 action under 42 U.S.C. § 1983 in the Northern District of Texas.
19 He was subsequently granted leave to proceed in forma pauperis.
20 On May 9, 2018, the Texas district court transferred the case to
21 this district because the Defendants are located in Los Angeles
22 and some of the events in the Complaint allegedly occurred here.
23 The action stems from Plaintiff's attempts to secure employment
24 with Digital Playground Inc. On June 25, 2018, after screening
25 the Complaint under 28 U.S.C. § 1915(e)(2), the Magistrate Judge
26 dismissed it with leave to amend because, among other
27 deficiencies, it failed to state any claim upon which relief
28 could be granted.

1 Plaintiff did not timely file an amended pleading or seek an
2 extension of time to do so. On July 30, 2018, he filed instead
3 what appears to be an objection to the screening order under
4 Federal Rule of Civil Procedure 46.¹ Plaintiff asserts, without
5 supporting argument or authority, that the Complaint does state a
6 claim for relief under the Eighth Amendment.²

7 Under Edwards v. Marin Park, Inc., 356 F.3d 1058, 1063-64
8 (9th Cir. 2004), a plaintiff may choose to stand on his claims as
9 pleaded rather than amend them. But that does not obligate the
10 Court to order his complaint served; rather, the Court may
11 consider an "election not to amend at face value, enter[] a final
12 judgment dismissing all claims with prejudice, and allow[]" the
13 plaintiff to seek immediate appellate review. Id. at 1064. That
14 is evidently what Plaintiff wants the Court to do. Because the
15 Court agrees with the Magistrate Judge's reasoning in her June 25
16 order and finds that the Complaint fails to state a claim under
17 Rule 12(b)(6), the Court gives Plaintiff his wish.

18 **ORDER**

19 It therefore is ORDERED that this action is dismissed with
20 prejudice, both for the reasons explained in the Magistrate
21 Judge's dismissal order and because Plaintiff has affirmatively
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25 ¹ His filing refers to an order entered in his case by the
26 Northern District of Texas on July 27, 2018, but no such order
27 appears on the docket in that case.

28 ² He evidently does not object to the Magistrate Judge's
other findings.


1 chosen not to amend his Complaint to comply with it.

2 LET JUDGMENT BE ENTERED ACCORDINGLY.

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4 DATED: August 16, 2018


PERCY ANDERSON
United States DISTRICT JUDGE

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6 Presented by:

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9 Jean P. Rosenbluth
U.S. Magistrate Judge